

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 470 of 1997

in

SPECIAL CIVIL APPLICATION No. 8588 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K. THAKKER
and
MR.JUSTICE S.D. PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES
2. To be referred to the Reporter or not ? YES
3. Whether Their Lordships wish to see the fair copy of the judgement ? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO
5. Whether it is to be circulated to the Civil Judge ? NO

BANK OF INDIA

Versus

BARODA CABLES PVT LTD

Appearance:

MR JT TRIVEDI, MR HIMANSHU J. TRIVEDI,
MR BRIJESH J. TRIVEDI & KUM. DEVYANI N. DAVE for
Appellant.

MESSRS S.N SHELAT instructed by H.M PARIKH &
K.C SHAH for Respondents.

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 01/09/97

ORAL JUDGEMENT {Per : Thakkar, J.}

This appeal is filed against an order passed by the learned Single Judge on February 27, 1997 in Special Civil Application No. 8588 of 1996.

2. Few relevant facts for deciding this Letters Patent Appeal may now be stated;

2.1 The appellant is Bank of India {"Bank "for short}. It filed Special Civil Suit No. 89 of 1985 in the Court of Civil Judge (SD), Godhra for recovery of amount of Rs. 82,18,857.02 ps with interest and costs. It was against the respondent Nos. 1 to 3. During pendency of the suit, it appears that some arrangement was arrived at between the debtors ie., respondent Nos. 1 to 3 and Sunflow Metals Private Limited Respondent No. 5 herein, pursuant to which an application was made by the said Sunflow Metals Private Limited before the learned Civil Judge to be joined as party to the suit. Likewise, the respondent No. 1 also made an application under Order 23 Rule 3 of the Code of Civil Procedure, 1908 stating therein that a settlement between defendant Nos. 1 to 3 and Sunflow Metals Private Limited which was also accepted by the Bank. On the basis of the said compromise and settlement, a decree was to be passed. In the meanwhile, however during the pendency of the suit, Debt Recovery Tribunal for the State of Gujarat, Union Territories of Dadra & Nagar Haveli, Daman & Diu came to be established at Ahmedabad in December, 1994. The appellant-Bank, therefore, filed an application on March 22, 1995 for transferring the case to the Debt Recovery Tribunal. By an order dated April 18, 1995, the Civil Judge (SD) Godhra transferred the suit to Debt Recovery Tribunal and all the records and proceedings were forwarded to the said Tribunal in accordance with the provisions of Section 31 of Recovery of Debts Due to Banks & Financial Institutions Act, 1993 {hereinafter referred to as "the Act"}. When the records and proceedings were received by Debt Recovery Tribunal, two applications were filed before the Tribunal being Ex.R. 405 and Ex.R 407 requesting the Tribunal to re-transfer the matter to the Court of learned Civil Judge (SD), Godhra as the tribunal had no jurisdiction to entertain the case and the matter can only be decided by a Civil Court. Both these applications were rejected by the

Tribunal and review applications also met with the same fate. Since the applications were disposed of and no relief was granted to the respondents, the above petition was filed by Baroda Cables Private Limited, being Special Civil Application No. 8588 of 1996. When the matter was placed for admission before the learned Single Judge, on November 6, 1996, the following order was passed :-

"Special Civil Application No. 2170 of 1995 involving challenge of vires of the Recovery of Debts Due to the Banks & Financial Institutions Act, 1993 is pending. In the present matter, the question is with regard to recording of settlement under Rule 3 Order 23 of the Code of Civil Procedure and joinder of purchaser in the pending proceeding. The Tribunal has dismissed the application of the concerned parties. That is how the petitioner is before this court.

Rule returnable on 28-11-1996. Ad-interim stay of the proceedings in terms of para 26 (iv). Still then Notice as to interim relief returnable on that date."

Para 26(iv) of the petition reads as under :-

"That pending the admission, hearing and final disposal of this Special Civil Application Yours Lordships be graciously pleased to stay further proceedings before the Hon'ble The Debts Recovery Tribunal, Ahmedabad in Special Civil Suit No. 89 of 1985 transferred from the Court of Civil Judge (S.D) Godhara, District Panchmahal."

Pursuant to notices issued by the Court, parties appeared, hearing took place and by the impugned order dated February 27, 1997, the learned Single Judge confirmed ad-interim relief granted earlier and it was ordered to be continued till disposal of the petition. That order was passed on February 27, 1997. It is against that order that the present Letters Patent Appeal is filed.

We have heard Mr. J.T Trivedi, learned counsel for the appellant and Mr. S.N Shelat instructed by Mr. H.M Parikh and K.C Shah for the respondents.

A preliminary contention was raised by the respondents regarding maintainability of Letters Patent

Appeal. It was contended that a petition was filed under Article 227 of the Constitution of India and that even, the learned Single Judge has also observed in the order that the petition was under Article 227 of the Constitution. Letters Patent Appeal, therefore, does not lie. We are, however, unable to uphold this contention. It is true that the learned Single Judge has observed in the order that the petition was under Article 227 of the Constitution. But it is clear that in substance and in reality, the petition was treated as under Article 226 of the Constitution. The first sentence of the order, dated November 6, 1996 makes it clear that another petition being Special Civil Application No. 2170 of 1995 involving challenge of vires of the Act was pending. It is true that in the present petition {Special Civil Application No. 8588 of 1996} constitutional validity of the Act was not challenged. The fact, however, remains that when the Court issued notice and granted ad-interim relief, the Court considered the fact that validity of the Act was challenged in some other matter which was pending. It is in the light of that fact that ex-parte rule was issued, ad-interim relief was granted and notice was issued as to why ad-interim should not be made interim relief. Subsequently, ad-interim relief was confirmed and made interim relief. In these circumstances, in our opinion, the petition cannot be said to be under Article 227 of the Constitution of India and Letters Patent Appeal would, therefore, be maintainable.

Coming to the merits of the matter, it was contended by Mr. Trivedi, learned counsel for the appellant-Bank that in accordance with the provisions of Section 31 of the Act, all pending proceeding automatically stood transferred before the Tribunal constituted under the Act. In view of the said provision, it can not be contended that the order passed by the Civil Judge (SD) Godhra transferring the matter to Debt Recovery Tribunal was illegal or unlawful. If the said order was legal, any order passed by the Debt Recovery Tribunal could not be assailed on the ground that Tribunal had no jurisdiction. If the Tribunal had jurisdiction and decided the applications, such order is not ultra vires or without jurisdiction.

It was further argued that even if it is assumed for the sake of argument that the order of Debt Recovery Tribunal is illegal or unlawful, alternative statutory remedy is available to the respondents as appeal is provided under Section 20 of the Act. Mr. Trivedi submitted that ordinarily in exercise of jurisdiction

under Article 226 and/or 227 of the Constitution of India, this Court would not entertain a petition if alternative remedy, statutory in nature, is available to an aggrieved party. The aggrieved party has to approach appellate forum by invoking the provisions of Section 20 of the Act. On that ground also, according to Mr. Trivedi, the learned Single Judge has committed an error of law in entertaining a petition and in granting interim relief.

The respondents, on the other hand submitted that the Tribunal has committed an error of law in rejecting the applications of the petitioners and since the order was without jurisdiction, alternative remedy is no bar in approaching this Court. It was also submitted that the order passed by the Tribunal was interim in nature and it is doubtful whether an appeal would lie against such interlocutory order. It was further urged that ordinarily when a petition is admitted and "Rule" is issued, this Court would not interfere at that stage and a petition should be decided on merits. It was submitted that even on merits, the Tribunal ought to have allowed the applications and rejection of applications has caused great prejudice to the petitioners.

Having considered the matter and having heard the arguments of learned counsel for the parties, we are of the view that interim relief should be vacated. So far as constitutional validity of the Act is concerned, it is conceded by the learned counsel for the petitioners that in the petition it has not been challenged. Our attention was invited by Mr. Trivedi on behalf of the Bank that though similar petitions are pending, interim relief against operation of the Act has been refused by this Court. He also stated that though a Division Bench of the High Court of Delhi finally decided the matter and declared the provisions of the Act ultra vires, the Hon'ble Supreme Court has admitted an appeal and has granted stay against operation of the judgement of the High Court. It is, therefore, clear that as on today, there is no stay against operation of the provisions of the Act, and hence, we will have to deal with the matter in accordance with the provisions of the Act.

The next question for our consideration is that if the order passed by the Debt Recovery Tribunal is not in accordance with law, what would be the remedy available to the aggrieved party. In our opinion, the

aggrieved party should approach Appellate Forum, if it is otherwise available. In this connection, the rival contention on behalf of the parties is as to whether an appeal against such an order is maintainable. According to Mr. Trivedi, every order passed by the Tribunal is appealable under Section 20 of the Act, whereas according to the respondents, no appeal would lie, if such order is not final.

In this connection, it would be relevant to consider the relevant provisions of the Act. Now the term "order" is not defined in the act but it is settled law that "order" may mean "interim order" as also "final order". The jurisdiction, powers and authority of the Tribunal has been dealt with in Section 17 of the Act. Sub-section (1) states that "A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions." Sub-section (2) is relevant, which reads as under :-

"(2) An Appellate Tribunal shall exercise on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made or deemed to have been made, by a Tribunal under this Act."

Section 18 bars jurisdiction of all other authorities and Courts. Section 20 is material for the purpose of deciding the controversy raised in this appeal and may be quoted in extenso;

"20.(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty five days from the date on which a copy of the order made or deemed to have been made, by the Tribunal is received by him and it

shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty five days if it is satisfied that there was sufficient cause for not filing it within that period. "

Looking to the above provisions, there is no doubt in our minds that there is no provision in the Act stating that an appeal would lie before an Appellate Tribunal only when the order is final in nature. On the contrary, looking to the above provisions in their entirety, it is clear that any order passed by the Debt Recovery Tribunal is subject to challenge under Section 20 before the Appellate Tribunal. If it is so, in our opinion, the contention of Mr. Trivedi is well-founded that the aggrieved party should approach the Appellate Tribunal for redress of grievances.

As the petition is already admitted and is pending for final hearing, we do not enter into a larger question. In our opinion, however, interim relief which was granted by the learned Single Judge deserves interference and it should be vacated. Since the order, according to us, is subject to appeal, an appeal can be filed before the Appellate Authority. As interim relief is operative and we are vacating it on the ground that alternative remedy is available to the appellant, it would be in the fitness of things if we grant reasonable time to the respondents to approach the Appellate Forum and to enable the Appellate Tribunal to pass an appropriate order regarding continuance or otherwise of interim relief. In the facts and circumstances of the case, we are of the view that it would be proper if we grant liberty to the respondents to file an appeal before the Appellate Tribunal as expeditiously as possible and also to make a prayer for interim relief. If such an appeal is filed on or before 30th September, 1997, the Tribunal shall entertain the said appeal without raising any objection as to the period of limitation. The Tribunal will also pass appropriate order on an application for stay or interim relief after hearing the parties before 20th October, 1997. Till then, interim relief granted by the learned Single Judge will continue.

We may clarify that we are not expressing any opinion on merits one way or the other and as and when such an appeal will be placed before the Appellate

Tribunal, the Tribunal will decide the same on its own merits, without being influenced by the observations made by the learned Single Judge or by us.

Appeal is accordingly partly allowed, however, with no order as to costs.

Prakash*